



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/629,322

07/28/2003

Albert Andrew Murrer III

034827-3101

6587

30542

7590

07/30/2009

FOLEY & LARDNER LLP

P.O. BOX 80278

SAN DIEGO, CA 92138-0278

EXAMINER

GROSSO, HARRY A

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

07/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/629,322	Applicant(s) MURRER, ALBERT ANDREW	
	Examiner HARRY A. GROSSO	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10, 12-19 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's request for reconsideration of the final rejection in the last Office Action in the after final amendment filed July 15, 2009 is persuasive. The finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill (5,476,184) in view of Hurwitz (5,620,069) and Zeddies, of record.

3. Regarding claim 6, Hill discloses a container system (Figures 1-2) comprising a soft-sided outer shell at least partially collapsible by an unorganized reduction with a plurality of vertical walls, a bottom integrally formed, an open top with a lid (20) and an inner frame (14, 16) that is at least partially collapsible (column 1, lines 53-66). Hill does not teach the shell has a watertight inner layer. Hurwitz discloses a similar container system with an outer shell having a waterproof material as an inner layer (column 2, lines 59-63) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an outer shell with a watertight inner layer as disclosed by Hurwitz in the container system disclosed by Hill to prevent moisture from penetrating the outer shell.

Art Unit: 3781

Hill does not teach an inner frame with rigid walls. Zeddies discloses a collapsible inner frame with rigid walls used with a collapsible outer shell to provide support to the outer shell. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a collapsible rigid inner frame as disclosed by Zeddies in the container disclosed by Hill to provide better support for the soft sided collapsible outer shell since this would involve simple substitution of one known element for another to yield predictable results.

4. Regarding claims 12 and 13, Hill discloses the lid is secured with a zipper (28, 30, column 2, lines 47-49)

5. Regarding claim 14, Hill discloses the bottom is structurally reinforced by straps (32, 34, column 49-52).

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill as modified by Hurwitz and Zeddies in view of Tattam, of record. Hill as modified by Hurwitz and Zeddies discloses the invention except for the use of the container to transport hazardous materials such as human organs. Tattam discloses a collapsible container that may be used for transportation of organs (column 1, lines 9-32). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the container of Hill as modified by Hurwitz and Zeddies for the transport hazardous materials such as human organs since it is known to use collapsible containers for such a purpose.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hill as modified by Hurwitz and Zeddies in view of Boyd-Moss et al, of record. Hill as modified

Art Unit: 3781

by Hurwitz and Zeddies discloses the invention but does not teach that the outer shell satisfies IATA 602 requirements. Boyd-Moss et al discloses that it is known to construct a transport package that meets IATA 602 requirements to allow the package to be used for transport of hazardous goods (column 1, lines 9-15 and column 8, lines 1-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use materials and construction to meet IATA 602 as disclosed by Boyd—Moss et al in the container disclosed by Hill as modified by Hurwitz and Zeddies to allow the container to be used for transport of hazardous materials.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hill as modified by Hurwitz and Zeddies in view of Kalal, of record. Hill as modified by Hurwitz discloses the invention except for the vent holes. Kalal discloses a collapsible soft sided container with a liner having vent holes in the outer shell to allow venting of air when the container is collapsed (42, Figure 2, paragraph 0022). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of vent holes in the outer shell as disclosed by Kalal in the container disclosed by Hill as modified by Hurwitz and Zeddies to allow venting of air when the container is collapsed.

9. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill as modified by Hurwitz and Zeddies in view of Mogil, of record.

10. Regarding claim 15, Hill as modified by Hurwitz and Zeddies discloses the invention with the outer shell including an outer fabric layer (column 2, lines 59-63) but does not teach foam insulation. Mogil discloses a soft-sided container (abstract) with an

Art Unit: 3781

outer fabric layer (88, Figure 10, column 5, lines 40-41) and a foam insulation layer (90).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of foam insulation as disclosed by Mogil in the container disclosed by Hill as modified by Hurwitz and Zeddies to protect the container contents against temperature variation.

11. Regarding claim 16, Hurwitz discloses the outer fabric includes polyester.

12. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill as modified by Hurwitz and Zeddies in view of Travis, of record.

13. Regarding claim 17, Hill as modified by Hurwitz and Zeddies discloses the container of with an inner frame having opposing rigid longitudinal walls and opposing collapsible side walls, but does not teach that the side walls link the ends of the longitudinal walls and allow a reduction in a distance between the longitudinal walls when collapsed. Travis discloses a container with an internal frame structure (Figures 1 and 2, column 2, lines 21-23) with the side walls linked to the ends of the longitudinal walls and the walls being collapsible allowing a reduction in a distance between the longitudinal walls (column 2, lines 14 to 25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the wall linkages of the frame structure as disclosed by Travis in the container disclosed by Hill as modified by Hurwitz and Zeddies to provide an inner frame that would fold flat with a thin profile for handling and storage.

Art Unit: 3781

14. Regarding claim 18, Zeddies further discloses the bottom is pivotably engaged to one of the opposing rigid walls and can be adapted to pivot between open and collapsed positions.

15. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hill as modified by Hurwitz, Zeddies and Travis, in view of Kalal, of record.

16. Hill as modified by Hurwitz, Zeddies and Travis discloses the invention except for a fastener that secures the frame in the collapsed position. Kalal discloses a collapsible soft sided container with a frame having a fastener to secure the container and frame in a collapsed position for ease of handling. (44, Figures 5 and 6, paragraph 0030). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a fastener as disclosed by Kalal on the collapsed inner frame to keep the frame secured in the collapsed position for ease of handling.

17. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hill as modified by Hurwitz and Zeddies in view of McHutchison (WO 02/18210 A1, March 7, 2002). Hill as modified by Hurwitz discloses the invention except for the outer shell capable of withstanding an internal pressure, which produces a pressure differential of not less than 95 kPa in the range of -40 degrees C to +55 degrees. McHutchison discloses an insulated container that it is able to transport human organs at pressures other than atmospheric pressure because this allows organs to be conserved for a longer period of time. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the ability to transport human organs at pressures other than atmospheric pressure in the container of Hill as modified by

Art Unit: 3781

Hurwitz and Zeddies. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the capability of withstanding an internal pressure which produces a pressure differential of not less than 95 kPa in the range of -40 degrees C to +55 degrees, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA).

Double Patenting

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 6-10, 12, 14-18, 26, 27 and 29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of copending Application No. 12/324,666. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the features of

Art Unit: 3781

the claims of the instant application are disclosed or taught by the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

20. Claim 13 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 15 of copending Application No. 12/324,666 in view of Hill. The copending application discloses the invention of the instant application except for the lid secured to the vertical walls with a zipper. Hill discloses the use of a zipper to secure the lid to the walls and it would have been obvious to use a zipper to secure the lid to the walls.

This is a provisional obviousness-type double patenting rejection.

21. Claims 19 and 28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 and 15 of copending Application No. 12/324,666 in view of Kahal. The copending application discloses the invention of the instant application except for the frame having a fastener to secure the frame in a collapsed position. Kahal discloses a collapsible soft sided container with a frame having a fastener to secure the container and frame in a collapsed position and it would have been obvious to use a fastener to keep the frame secured in the collapsed position for ease of handling.

This is a provisional obviousness-type double patenting rejection.

22. Claims 25 and 30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 15 of

Art Unit: 3781

compending Application No. 12/324,666 in view of McHutchison. The compending application discloses the invention of the instant application except for the outer shell capable of withstanding an internal pressure, which produces a pressure differential of not less than 95 kPa in the range of –40 degrees C to +55 degrees. McHutchison discloses an insulated container that it is able to transport human organs at pressures other than atmospheric pressure because this allows organs to be conserved for a longer period of time. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the ability to transport human organs at pressures other than atmospheric pressure in the container of Hill as modified by Hurwitz and Zeddies. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the capability of withstanding an internal pressure which produces a pressure differential of not less than 95 kPa in the range of –40 degrees C to +55 degrees, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA).

23. This is a provisional obviousness-type double patenting rejection.

Response to Arguments

24. Applicant's arguments, see the amendment, filed July 15, 2009, with respect to the rejection(s) of claim(s) 6-10, 12-19 and 25 under Hill in view of Hurwitz have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

Art Unit: 3781

However, upon further consideration, a new ground(s) of rejection is made in view of Zeddies as presented above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HARRY A. GROSSO whose telephone number is (571)272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Harry A. Grosso
/Harry A. Grosso/
Examiner, Art Unit 3781

hag